



Docket No.: 1259-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)

Bojidar M. Stankov)

) Group Art: 1616

) Examiner: Choi, Frank I.

Serial No.: 09/854, 802)

Filed: May 14, 2001)

Files only

For: CONTROLLED RELEASE FORMULATIONS CONTAINING AN ACTIVE
INGREDIENT, PREFERABLY MELATONIN AND THE METHOD OF PREPARATION

New York, NY 10036

May 31, 2005

MS Appeal
Commissioner for Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

This is an appeal from the final rejection of claims 16-18 and 20-24. This is the second Appeal Brief that has been filed in this application and under the provisions of 35 U.S.C. §134(a) no additional appeal fee is due.

(1) Real party in interest. The real party in interest is Ambros Pharma S.r.l.

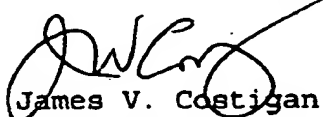
(2) Related appeals and interferences. There are no related appeals or interferences.

(3) Status of the claims. Claims 16-18 and 20-24 are in the application and all of these claims have been finally rejected.

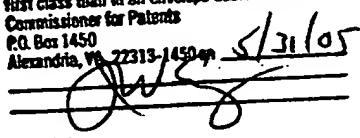
(4) Status of amendments. An Amendment is being filed herewith to delete the mark "---" at page 8. A petition, directed to the objection to claims 17, 18, 20, 21 22, and 24 is also being

of record be reversed and patent protection allowed to an advance in the art.

Respectfully submitted,


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PETITION

It is requested that the Commissioner overrule the Examiner's determination that claims 17, 18, 20, 21 22, and 24 fail to comply with 37 CFR§1.75(c) because they fail to limit a prior claim and are in improper dependent form. The basis of the objection is believed to be an erroneous determination that a dependent claim must explicitly recite the terms of a prior claim in order to be a proper dependent claim. Nothing in the Statute or Rules imposes such a requirement as the reference back to a prior claim imports all of the limitations into a dependent claim even if the dependent claim fails to recite those limitations.

Claim 17 refers back to independent claim 16 and it further requires that the amount of melatonin be 1-3mg whereas the amount of melatonin is not specified in independent claim 16. Claim 18 is dependent on claim 16 and points out the invention in terms that specify that the invention "consists

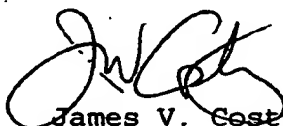
essentially of" the recited components where independent claim 16 recites that the tablet "comprises" the recited ingredients. Claim 20 refers back to independent claim 16 and it further requires that the amount of melatonin be 1-3mg whereas the amount of melatonin is not specified in independent claim 16 and also points out the invention in terms that specify that the invention "consists essentially of" the recited components where independent claim 16 recites that the tablet "comprises" the recited ingredients.

Claim 21 has a specific plasma level limitation that is not mentioned in independent claim 16. Claim 22 is in independent form and should not be included in this objection. Claims 23 and 24 also are in proper dependent form as they further limit a prior claim.

For these reasons, it is requested that the objections to the claims be overruled.

Any required fee for this petition may be charged to Deposit Account No. 08-1540.

Respectfully submitted,


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